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No. 87-505

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHICK KAM CHOO, *et al.*,
Petitioners,

v.

EXXON CORPORATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF FOR PETITIONERS

JOEL I. KLEIN
DAVID BOYD
DAVID A. BONO
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184

BENTON MUSSLEWHITE
609 Fannin, Suite 517
Houston, TX 77002
(713) 222-2288
Counsel of Record

JOSEPH C. BLANK
1119 First Texas Building
170 Orleans Street
Beaumont, TX 77701
(409) 833-2245
Counsel for Petitioners

WILSON - EPES PRINTING CO. - INC. - 789-0096 - WASHINGTON, D.C. 20001

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Attempting to reason from conclusion to premise, Respondent Exxon argues: (1) that federal *forum non conveniens* law preempts state law in admiralty cases; and (2) that, therefore, the federal district court in Texas, in dismissing petitioners' case on grounds of *forum non conveniens*, must necessarily also have decided that this case could not be heard in the Texas state courts. Although both legs of Exxon's argument are insupportable, only the second is properly before this Court. The fact is that the federal court's decision to dismiss Mrs. Choo's claims did not even address, let alone decide, whether federal law would prohibit Texas courts from hearing this case on grounds of *forum non conveniens*. Consequently, even if Exxon's preemption argument were correct, it must be advanced in the Texas

state courts. In view of the Anti-Injunction Act, there is simply no warrant for enjoining those courts from resolving an issue that has not previously been decided by a federal court.

Exxon's preemption argument is not only premature, however, it is also incorrect. Through the combined misuse of the doctrines of *forum non conveniens* and federal preemption, Exxon essentially argues that maritime cases involving the application of foreign law may not be heard in any court in this country despite the fact that admiralty jurisdiction over such cases has been granted to both the federal and the state courts. *See* 28 U.S.C. § 1333. Even assuming that the policy considerations proffered in support of such an approach had any merit, the argument should be made to the Congress, and not to this Court. Congress, after all, conferred the admiralty jurisdiction in question. It alone should be allowed to decide whether to take it away.

I. THE ANTI-INJUNCTION ACT BARS THE FEDERAL COURT INJUNCTION AGAINST HEARING THIS CASE IN TEXAS STATE COURT.

Even assuming that Respondents' mistaken interpretations of maritime law and *forum non conveniens* principles were correct, the fact remains that now is not the appropriate occasion for this Court to consider them. The Anti-Injunction Act as well as paramount concerns of federalism and comity dictate that the Texas courts be afforded the opportunity to address the considerations that Exxon raises, along with other potentially relevant considerations, including the policies implicated by that State's open forum statute. As Exxon acknowledges, it is not clear how the Texas courts will decide the issue. Respondents' Br. at 29. Whatever the prognossi, however, on the facts of this case the Anti-Injunction Act prohibits the lower federal courts from enjoining the Texas courts' consideration of either federal law or its own law in the first instance. If the Texas courts err in

resolving the issues, only then would it become the responsibility of this Court to correct them.

This Court's decision in *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), makes these essential points with unmistakable clarity. In that case, much like in this one, an injunction of a state court proceeding was supported by the claim that, in initially deciding a federal law issue, the district court must also necessarily have decided that federal law preempted state law in the area. After examining the initial district court opinion with care, however, this Court concluded that the argument simply could not be supported because the initial judgment resolved only the federal law issue, and not the preemption issue. It made no difference in this regard that the Court itself, subsequent to the initial district court decision, had ruled that federal law does in fact preempt state law in the area in question. *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). This consideration notwithstanding, the Court held, all that could be protected by an injunction were those issues that were actually resolved by the federal court, and not those that might have been decided.[1]

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[1] *See also Texas Employers' Ins. Ass'n v. Jackson*, 820 F.2d 1406 (5th Cir.), *rehearing en banc granted*, 828 F.2d 1 (5th Cir. 1987). There, a claim under the Longshore and Harbor Workers Compensation Act, 33 U.S.C. §§ 901-950 ("LHWCA"), was processed and finally adjudicated and the claimant awarded benefits. In the meantime, the claimant had filed suit in state court alleging bad faith under state law against the LHWCA insurance carrier concerning the manner in which such carrier had handled the LHWCA claim. The federal district court granted an injunction against the state court action, primarily on the ground that the LHWCA preempted the state court bad faith remedy and, because it did, the LHWCA final claim adjudication was res judicata of the state court action and thus justified an injunction under the "relitigation" exception to the Anti-Injunction Act. In reversing that portion of the district court's holding, the panel stated that the issue of state law bad faith was not before the administrative law judge, just as the

In the instant case, Respondents do not contend, nor could they, that the initial federal court ruling dismissing Mrs. Choo's claims actually decided either that federal law preempts state law on questions of *forum non conveniens* in admiralty cases, or that under Texas law this case could not be heard in state court. On the contrary, as we demonstrated in our opening brief (pp. 3-4, 16), those issues were never raised or addressed in the initial federal court proceedings. It was only after the injunction subsequently issued that the preemption issue was first raised. But that post-hoc rationalization cannot support an injunction intended to protect an earlier judgment that never reached the issue.

The purpose of the Anti-Injunction Act is to protect the separate sphere of state power that is the keystone of federalism. When state courts are presented with issues of federal law, they are fully competent to determine those issues, and no federal injunction can be justified out of fear that the state court will err. *Pennzoil v. Texaco*, 107 S. Ct. 1519 (1987); *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955). Accordingly, the federal courts below did not have the authority to enjoin the Texas courts from considering the preemptive effect of the prior federal determination "merely because it is asserted that the state court is improperly asserting jurisdiction in an area preempted by federal law or federal procedures." *Atlantic Coast*

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issue of state law *forum non conveniens* was not before the initial district court in the case at bar. Citing *Atlantic Coast Line*, *supra*, the panel then reversed the grant of the injunction. It held that, even though the LHWCA did preempt the state court action, "[p]reemption is not equal to res judicata" and that:

> We recognize that a finding of preemption coupled with an inability to coercively enforce that finding is paradoxical, to say the least. Nevertheless, it is only emblematic of the prized value we have historically place[d] on the principles of federalism and comity.

820 F.2d at 1416, 1417.

Line, 398 U.S. at 297-98 (Brennan, J., dissenting); *see also id.* at 294 (majority opinion); *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977) (plurality opinion). Because the injunction was no more than an affront to the abilities of the Texas courts to decide these issues in the first instance, reversal is compelled. *Atlantic Coast Line*, 398 U.S. at 296; *see also District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923).

II. NEITHER THE DOCTRINE OF *FORUM NON CONVENIENS* NOR PRINCIPLES OF FEDERAL PREEMPTION REQUIRES DISMISSAL OF THIS ADMIRALTY CASE FROM STATE COURT.

Exxon devotes most of its brief to arguing that federal principles of *forum non conveniens* preempt state law in admiralty cases. As we have indicated above, in this case that argument must be made to the Texas courts before it may be reviewed by this Court. Exxon's argument is not only addressed to the wrong forum, however. It is also incorrect on the merits.

As we understand it, Exxon's position appears to rest on two essential predicates. First, it suggests that the federal law governing *forum non conveniens* requires dismissal of an admiralty case like this one because the district court initially found that Mrs. Choo's claims were not governed by the general maritime law of the United States.[2] Second, it argues that the state courts

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[2] We should note as a preliminary matter that the logic that leads Exxon to this position is flawed. Exxon's premise is derived from Fifth Circuit case law, now explicitly overturned, *see In re Air Crash Disaster Near New Orleans, La.*, 821 F.2d 1147 (5th Cir. 1987) (en banc), that a court may not dismiss a case on *forum non conveniens* grounds if American law, not foreign law, applies. *See generally Fisher v. The Agios Nicolas V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied*, 454 U.S. 816 (1981). Exxon's conclusion turns this case law on its head, arguing that a court must dismiss a case when foreign law is found to apply. *See* page 7 *infra*.

are bound to follow this federal *forum non conveniens* rule under the "uniformity doctrine." Taken together, these two assertions would effectively remove a whole class of admiralty cases from the federal and state courts alike, even though Congress specifically conferred such jurisdiction in the first place. Not surprisingly, this argument for judicial nullification of congressionally-conferred jurisdiction is unpersuasive.

As we explained in our opening brief (pp. 30-35), because the doctrine of *forum non conveniens* is based in part on "considerations affecting the court's own administrative and legal problems," *Piper Aircraft Corp. v. Reyno*, 454 U.S. 235, 251 (1981), state courts should be free to apply their own *forum non conveniens* standards in admiralty cases so that they can properly accommodate their own institutional interests, along with any pertinent federal law concerns as well as the concerns of the parties. Exxon's argument to the contrary rests on the assertion that there is a need for uniformity in admiralty cases and on the assumption that a preemptive federal rule will lead to such uniformity, thereby providing that cases such as Mrs. Choo's could not be heard in any court in this country. The argument is flawed from its inception because it is predicated on a basic misunderstanding of the nature of federal *forum non conveniens* law.

Federal law governing *forum non conveniens* determinations in cases involving foreign claimants—much like in other cases—remains at bottom a discretionary doctrine. As this Court put it in *Piper Aircraft v. Reyno*, 454 U.S. at 257, a "*forum non conveniens* determination is committed to the sound discretion of the trial court." *See also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Such a discretionary determination, by definition, contemplates that different courts may well reach different conclusions in substantially similar circumstances. That, of course, is the fundamental difference between a discretionary doctrine and a mandatory rule of law. In view of this recognition, a requirement that state courts apply federal *forum non conveniens* principles in admiralty cases simply will not lead to the uniformity of outcomes that Exxon would insist upon.

Although Exxon attempts to convey a contrary impression, the cases it relies on fully support our view. Thus, Exxon asserts that "the development that has taken place in the Fifth Circuit is most relevant to the case at hand." Respondents' Br. at 19. But the Fifth Circuit standard that Exxon specifically relies on makes plain that, even when a federal court determines that foreign law governs a claim, it still has discretion "to retain jurisdiction acquired over a maritime suit with foreign factors." *Chiazor v. Transworld Drilling Co.*, 648 F.2d 1015, 1018 (5th Cir. 1981), *cert. denied*, 455 U.S. 1019 (1982), *quoted* in Respondents' Br. at 20.[3] Thus, even if a state court were required to apply this federal standard to *forum non conveniens* motions, it would still be permitted to hear an admiralty case like the instant one. *See also Fisher v. The Agios Nicolos V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied*, 454 U.S. 816 (1981). Accordingly, Exxon's quest for a uniform federal rule mandating dismissal of certain kinds of admiralty cases ultimately proves illusory since the *forum non conveniens* doctrine that it relies on simply will not support such a result.

Perhaps aware of this problem, Exxon appears to go further by suggesting that federal *forum non conveniens* law should, in fact, be interpreted to require that admiralty cases such as Mrs. Choo's may not be heard in any court in this country. Such a rule is appropriate, according to Exxon, "when maritime law impinges on transnational or international relations," Respondents'

[3] As *Chiazor's* reliance on *Gilbert*, *supra*, indicates, 648 F.2d at 1019, Exxon is mistaken when it asserts that the Fifth Circuit's approach "places little reliance on factors related solely to convenience." Respondents' Br. at 20.

Br. at 9, and thus implicates "the principles of accommodation and comity recognized in the international context by our general maritime law." *Id.* at 24.[4] In our view, this argument—which would, in effect, eliminate a portion of the admiralty jurisdiction granted to the federal and state courts—should be addressed to Congress, and not to this Court.[5]

We note initially that, while the purported rationale for Exxon's approach has to do with "international relations," neither the United States nor any foreign country has sought to file an amicus brief in this case. Rather, it is Exxon, joined by several other U.S. companies as *amicus curiae*, that puts forward these concerns. But these companies are all litigants that have a direct and personal interest in fashioning a rule that will allow them to escape jurisdiction in this country for maritime torts that they commit overseas. Such parties hardly seem to be a likely source from which to accurately determine true international and transnational interests.

More significantly, the assessment of these kinds of interests is uniquely within the authority of Congress, which is obviously best situated to weigh the validity of

[4] Every federal court *forum non conveniens* claim necessarily implicates international or transnational concerns. A court may properly consider such a dismissal only when such factors are present, regardless of whether the case arises under maritime law. Issues of inconvenience germaine to purely domestic cases cannot lead to a *forum non conveniens* dismissal, but rather to a transfer under 28 U.S.C. § 1404(a).

[5] Exxon's effort to analogize its proposal "to federal abstention under grounds of comity," Respondents' Br. at 25 n.15, is unpersuasive. The traditional abstention doctrine is designed to allow a federal court to defer action while awaiting the outcome of relevant state court proceedings. *Deakins v. Monaghan*, 108 S. Ct. 523 (1988). After the state courts act, however, the federal court may then properly exercise its jurisdiction. The rule that Exxon proposes, however, involves a dismissal of certain admiralty cases, never to return to any court in this country.

the concerns proffered by Exxon and to balance them against potentially countervailing concerns about the need to keep the courts of this country open to foreign claimants. *See, e.g., Romero v. International Terminal Operating Co.*, 358 U.S. 354, 360 (1959). This recognition is especially compelling in the instant situation since it is Congress that conferred admiralty jurisdiction—in both federal and state court—in a case like Mrs. Choo's. If there is good and sufficient reason to eliminate such cases from the admiralty jurisdiction, Congress is doubtless capable of doing so, as recent experience in a related context indicates. *See* 46 U.S.C. § 688(b). But it would be both unwise and inappropriate for this Court, through the invocation of the *forum non conveniens* doctrine in a certain class of admiralty cases, to eliminate congressionally-conferred jurisdiction.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

JOEL I. KLEIN
DAVID BOYD
DAVID A. BONO
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184

BENTON MUSSLEWHITE
609 Fannin, Suite 517
Houston, TX 77002
(713) 222-2288
Counsel of Record

JOSEPH C. BLANK
1119 First Texas Building
470 Orleans Street
Beaumont, TX 77701
(409) 833-2245
Counsel for Petitioners